

## **GENERAL PRINCIPLES OF COURT PROCEEDINGS**

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### **Introduction**

In Virginia there are three types of courts--courts not of record, courts of record, and appellate courts. Most child support matters are heard in Juvenile and Domestic Relations (JDR) District Courts, which are courts not of record. The result of a hearing in a JDR District Court can be appealed to the Circuit Court and there would be a whole new trial. On appeal, the Circuit Court has the same power and authority as a JDR District Court. The decision of the JDR District Court does not bind the Circuit Court at all--there is no "record" of the original trial to affect what happens in the Circuit Court. While there is a file from the JDR District Court that goes to the Circuit Court, and the Circuit Court judge may ask what happened in the lower court, he or she is not influenced by that decision. Circuit Courts are courts of record; the results from that court can be appealed, but there will not be new trial unless ordered by an appellate court. On appeal from a Circuit Court, the party asking for a different result must prove that the Circuit Court made mistakes worthy of changing the decision. The first appellate court that hears child support appeals from Circuit Courts is the Court of Appeals, and from there a case can be appealed to the Supreme Court of Virginia. Only a small percentage of orders from JDR District Courts are appealed to Circuit Courts, and only a tiny fraction of Circuit Court orders are then appealed higher to the appellate courts.

Courts "speak" through their written orders. While a person must do what the judge orders, and a court's decision applies as soon as the judge announces his or her decision, the judge will write the decision in a written order. A parent cannot later argue that the judge meant something else despite what the written order says. When a parent receives an order, he or she needs to read it carefully to make sure it states what the judge decided. If there are mistakes, the parent should immediately contact the court to fix them. [In theory, a clerical error can be fixed at any time. It is advisable, however, that if a parent discovers a clerical error--such as a misspelled name or two transposed numbers--he or she should immediately request the court to correct the error.] The effective date of an order is either the date the order says it takes effect or, if it does not specify the date it takes effect, the date it is signed by the judge. Courts can enter either a temporary or a final (permanent) order.

The parents must abide by all of the terms of the order and may not alter, change, or ignore any provision. They may not make their own agreement and replace the court's order with it. The order applies to both parents. The court will enforce the order of child support as it is written--not how the parents interpret the order or how they have agreed the child support should be paid.

A noncustodial parent who relied on an agreement to pay less than the ordered amount would still be held responsible for the ordered amount by the court. Only the court, or DCSE if the order is an administrative order it issued, can modify a child support order. The court can punish either or both parents for violating or ignoring the provisions of the child support order with fines or incarceration.

### **Jurisdiction and Venue**

For a court to hear a matter and be able to issue an order, it must have jurisdiction. Jurisdiction has two components – subject matter jurisdiction and personal jurisdiction. Subject matter jurisdiction means that the court is designated to hear certain types of cases or issues by the legislature. The JDR District Courts and the Circuit Courts have subject matter jurisdiction to hear child support matters; General District Courts do not. While the Circuit Court can hear every matter on appeal that can come before the JDR District Courts, there are some child support proceedings--such as contesting a lien against property--which can only be heard in Circuit Court.

Personal jurisdiction is the authority of the court to involve a specific person in a lawsuit. In Virginia, the courts have personal jurisdiction over the citizens of the Commonwealth. Additionally, for child support purposes, parents who are out of state may also be subject to the personal jurisdiction of the court. For instance, if a person fathered a child in Virginia and then left the state, Virginia courts would have personal jurisdiction over him as well.

Even if a court has subject matter and personal jurisdiction, it must be the correct venue as well. “Venue” is the particular location that it would be appropriate for a court to hear a case. The court where the child or either parent lives would normally be the proper venue for a child support case. If a parent moves from one court’s jurisdiction to another, the case can be transferred either on the motion of a parent or by the court itself. Also, if the case is in a Circuit Court, it can be transferred to the appropriate JDR Court and vice versa.

### **Petitions and Motions**

Cases are begun in a court by filing the appropriate paperwork. For individuals with cases with DCSE, it can file matters with the court on their behalf. Individuals who do not have a case with DCSE, or who have a case but wish to file their own actions, can file directly with the court where the parent or child lives. In each JDR District Court there is an intake office, often called the court services unit, which may assist in the filings of petitions and/or motions with the court.

Often times, matters may also be filed with the court clerk’s office. Make sure you have a correct address for the other parent. A petition is the legal paperwork needed to start a child support case to either establish paternity or set support. If there is already a child support order, and it needs to be changed, a motion is filed with the court. To enforce a provision of a child support order--such as to force the other parent to pay the correct amount of support--a Rule to Show Cause is filed. It requires the other parent to “show cause” as to why the court should not

punish them for the alleged violation of the court's order. There is no cost for filing a petition, a motion, or Rule to Show Cause.

### **Service of Process**

Having a matter filed in the appropriate court is not enough to have the court hear a case. The parent who did not file the petition or motion with the court must be legally notified of the pending child support case. This legal notice is service of process, and there are certain service requirements for different types of cases. A summons is the actual legal document a *parent* receives to command his or her appearance before a court at a specific date and time, whereas a subpoena directs a *witness* to appear in court at a specific date and time. All service of process must be done by either a private process server or law enforcement officer. Individuals who are personally served and do not show up for court can be arrested and jailed or fined for failing to appear. If an individual does not appear on a lesser form of service, such as when it is posted on his or her front door or served on an adult household member, he or she may be required to show cause to the court why he or she did not appear. If there is service and the individual does not appear or leaves before his or her case is called, the court can enter an order without the person present. Not showing up for court if there was proper service or leaving before the case is called can lead to serious consequences for the person.

### **The Hearing**

At court, both parents will have the opportunity to be heard and to present evidence. The parent asking for the court to take certain actions--for example, to establish an order of support, change an order, or enforce an order--must meet the initial burden of convincing the court to do what he or she has asked for by presenting evidence and testimony. The other parent will then have the opportunity to present testimony, evidence, and argument to convince the court not to do what the requesting party asks for. Court proceedings have specific rules that must be followed at all times as to who can talk when, where to stand, and how to act. Many courts have dress codes that specify what is and what is not acceptable apparel for court. The courts do not have daycares; parents with small children should make childcare arrangements before going to court. Failure to follow the rules can result in losing one's case, ejection from the court, or even being fined or jailed for inappropriate behavior.

Court proceedings are not the time for parents to argue between themselves. A parent should speak only to the judge when it is his or her turn and should not speak directly to the other parent. Both parents must behave themselves at all times, whether or not they are represented by lawyers. If either parent is unhappy with what the court decides, he or she can either file a motion to rehear the matter or appeal it. Neither parent should argue with the judge or the other parent.

### **Motion to Rehear or Noting an Appeal**

If a parent disagrees with the ruling of the court, he or she has two options. First, the parent may file a Motion to Rehear at the JDR Court clerk's office. A Motion to Rehear must be filed within thirty days of the entry (date of signing) of a JDR District Court order. The same judge usually hears the case and the parent will have an opportunity to present evidence, legal precedent, or argument as to why the judge should rule differently than the first time. A Motion to Rehear is not necessarily a new trial, but rather an opportunity to have the court correct what the parent believes to have been a mistake.

The other option is for a parent to "note" an appeal from the JDR District Court to the Circuit Court. The appeal is made at the JDR Court clerk's office. An appeal of a JDR District Court ruling must be made within ten days of the entry of the court's order, unless the matter is an interstate matter in which case it must be made within thirty days. Essential to this process, the appealing party, known as the appellant, must request and post an appeal bond so the circuit court will have subject matter jurisdiction to hear the case. In enforcement cases, the JDR District Court will set a series of bonds that must be posted--appeal, appearance, and performance--prior to the appeal being heard. Once the matter is properly appealed to the Circuit Court, there will be a new trial in the Circuit Court. The Circuit Court decision will replace the JDR District Court's decision.

An order, however, remains in effect until it is replaced by another order. Even if a parent wants to appeal or motion a court to rehear a matter, he or she must follow the order of the court until it is changed by a court.